

OWENSBY, et al. vs. City of Cincinnati
November 6, 2003

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

ESTATE OF ROGER D. :
OWENSBY JR., et al., :
 :
Plaintiffs, :
vs. : Case No. 01-CV-769
 : (Judge S. A. Spiegel)
CITY OF CINCINNATI, :
et al., :
 :
Defendants. :

Videotaped deposition of BRIAN ANTHONY

BRAZILE, a witness herein, called by the plaintiffs
for cross-examination, pursuant to the Federal Rules
of Civil Procedure, taken before me, Wendy Davies
Welsh, a Registered Diplomate Reporter and Notary
Public in and for the State of Ohio, at the offices
of Helmer, Martins & Morgan Co. LPA, 1900 Fourth &
Walnut Centre, 105 East Fourth Street, Cincinnati,
Ohio, on Thursday, November 6, 2003, at 11:02 a.m.

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BRIAN ANTHONY BRAZILE

<p>1 APPEARANCES:</p> <p>2 On behalf of the Plaintiffs:</p> <p>3 Paul B. Martins, Esq. Don Stiens, Esq. Helmer, Martins & Morgan Co. LPA Suite 1900, Fourth & Walnut Centre 105 East Fourth Street Cincinnati, Ohio 45202 Phone: (513) 421-2400</p> <p>7 John J. Helbling, Esq. The Helbling Law Firm, L.L.C. 3672 Springdale Road Cincinnati, Ohio 45251 Phone: (513) 923-9740</p> <p>10 On behalf of the Defendants City of Golf Manor, Stephen Tilley, Roby Heiland and Chris Campbell:</p> <p>12 Wilson G. Weisenfelder Jr., Esq. Rendigs, Fry, Kiely & Dennis 900 Fourth & Vine Tower One West Fourth Street Cincinnati, Ohio 45202-3688 Phone: (513) 381-9292</p> <p>15 On behalf of the Defendants City of Cincinnati, Darren Sellers, Jason Hodge:</p> <p>17 Geri Hernandez Geiler, Esq. Assistant City Solicitor Department of Law Room 214, City Hall 801 Plum Street Cincinnati, Ohio 45202 Phone: (513) 352-3346</p>	<p>Page 2</p> <p>1 notes may then be transcribed out of the presence of</p> <p>2 the witness; and that proof of the official</p> <p>3 character and qualifications of the notary is</p> <p>4 expressly waived.</p> <p>5</p> <p>6</p> <p>7 I N D E X</p> <p>8 Examination by: Page</p> <p>9 Mr. Martins 5</p> <p>10 Mr. Weisenfelder 110</p> <p>11 Mr. Martins 135</p> <p>12</p> <p>13 E X H I B I T S</p> <p>14 Deposition Exhibit 47 64</p> <p>15 Deposition Exhibit 48 75</p> <p>16 Deposition Exhibit 49 77</p> <p>17 Deposition Exhibit 50 78</p> <p>18 Deposition Exhibit 51 80</p> <p>19 Deposition Exhibit 52 93</p> <p>20 Deposition Exhibit 53 102</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p>1 APPEARANCES (Continued):</p> <p>2 On behalf of Brian Anthony Brazile and the Defendants Robert B. Jorg, Patrick Caton, Jason Hodge, Victor Spellen and Darren Sellers:</p> <p>4 Donald E. Hardin, Esq. Hardin, Lefton, Lazarus & Marks, LLC 915 Cincinnati Club Building 30 Garfield Place Cincinnati, Ohio 45202 Phone: (513) 721-7300</p> <p>7 Also present:</p> <p>8 Richard W. Grubb, Videographer</p> <p>9 Lisa Damstrom, Law Clerk Helmer, Martins & Morgan Co., L.P.A.</p> <p>11 Mr. Roger Owensby</p> <p>12 Mrs. Brenda Owensby</p> <p>13 Mr. Shawn Owensby</p> <p>14</p> <p>15</p> <p>16 S T I P U L A T I O N S</p> <p>17</p> <p>18 It is stipulated by and among counsel for the</p> <p>19 respective parties that the deposition of BRIAN</p> <p>20 ANTHONY BRAZILE, a witness herein, called by the</p> <p>21 plaintiffs for cross-examination, pursuant to the</p> <p>22 Federal Rules of Civil Procedure, may be taken at</p> <p>23 this time by the notary; that said deposition may be</p> <p>24 reduced to writing in stenotype by the notary, whose</p>	<p>Page 3</p> <p>1 VIDEOGRAPHER: The time is 11:02 a.m. The</p> <p>2 date is November the 6th. The year is 2003.</p> <p>3 Would you please swear the witness, ma'am.</p> <p>4 BRIAN ANTHONY BRAZILE</p> <p>5 being by me first duly cautioned and sworn, deposes</p> <p>6 and says as follows:</p> <p>7 VIDEOGRAPHER: We're on the record, Mr.</p> <p>8 Martins. This is videotape number 1 for this</p> <p>9 deposition.</p> <p>10 MR. MARTINS: Thank you.</p> <p>11 CROSS-EXAMINATION</p> <p>12 BY MR. MARTINS:</p> <p>13 Q. Sir, would you state for the record your</p> <p>14 full name, please.</p> <p>15 A. My full name is Brian Anthony Brazile.</p> <p>16 Q. And your date of birth?</p> <p>17 A. Is 11/11/70.</p> <p>18 Q. Have you ever had your deposition taken</p> <p>19 before?</p> <p>20 A. No, sir.</p> <p>21 Q. Let me cover some ground rules with you.</p> <p>22 As you have just observed, the court reporter places</p> <p>23 you under oath. I will be asking you questions. If</p> <p>24 I should ask you a question that either you don't</p>

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<p>1 A. It was sort of like fetal sort of 2 position. 3 Q. Did you say anything to Officer Heiland at 4 that time, after seeing Mr. Owensby with your 5 flashlight? 6 A. Yes. 7 Q. What did you say to Officer Heiland? 8 A. I walked around to the other side of the 9 vehicle. 10 Q. To the -- to the -- 11 A. To where they were. 12 Q. -- rear of the passenger's side of the 13 vehicle? 14 A. Where they were standing. 15 Q. Okay. 16 A. And I asked him, I said, "The guy you have 17 in your car, is he okay?" I said, "Can he breathe?" 18 I said, "He's in a" -- you know, position that 19 looked like he was in, it may have been hard, so I 20 asked him. I'm figuring he's their prisoner. No 21 one ever said whose he was. I figured he was 22 theirs, because he was in their car. 23 And basically I was just trying to let 24 them know to check on him, just to see what's going</p>	<p>1 Because they didn't actually go and check. 2 I figure if it was my vehicle and someone 3 told me that, you know, something may or possibly 4 could have been wrong, you know, I would probably 5 run right over and check and see what's going on. 6 But for some reason they didn't, so I took 7 it that probably they had already checked on him and 8 they knew what was -- you know, maybe he was fine, 9 maybe, I don't know, was overexaggerating maybe. 10 Q. In any event, they -- they took no action 11 in response to your question to them as far as "Can 12 he breathe," right? 13 A. No, sir. 14 Q. As I recall, your statement was something 15 along the lines of: this looks fucked up, can he 16 breathe, it don't look like he can from the way he's 17 laying. 18 A. Uh-huh. 19 Q. Is that accurate to your recollection? 20 A. Yes. 21 Q. And you saying, in response to that, 22 Officer Heiland and possibly the other officer 23 simply shrugged their shoulders? 24 A. Yes.</p>
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<p>1 on with him or did they know or had they checked. I 2 don't know. I just had arrived. 3 And basically when I told them, you know, 4 they basically just stood there and kind of like 5 shrugged their shoulders. 6 Q. Both of them? 7 A. From what I recall. 8 Q. Did they say -- 9 A. But I was mainly talking to -- to Rob. 10 Q. To -- to Heiland? 11 A. Correct. 12 Q. Did Officer Heiland or the other officer, 13 Officer Campbell, say anything to you in response? 14 A. No. No, sir. 15 Q. In your -- after you told them that -- 16 voiced your concern that you weren't sure that the 17 person could breathe, or "Can he breathe," I guess, 18 was your -- your question to them, and they shrugged 19 their shoulders, was the -- the shrug, did you take 20 that to mean, We don't know, or -- or how -- how did 21 you interpret the shrug of the shoulders? 22 A. Well, once I made the statement that I 23 made and, you know, he shrugged, kind of shrugged 24 his shoulders, I took it as everything was fine.</p>	<p>1 Q. What did you do then? 2 A. At that point in time I took it as I guess 3 everything was okay then. I went back to my vehicle 4 and proceeded to put my hat on. And like I say, 5 right after that, that's when supervisors and 6 everybody started showing up on -- onto the scene. 7 Q. Okay. So you walk back to your -- to the 8 scout car, get your hat out, put your hat on? 9 A. Uh-huh. 10 Q. Is Officer Jorg still around the area? 11 A. Somewhere, yes. 12 Q. Is Caton still around the area? 13 A. Everybody was still in the area, yes. 14 Q. Hunter's in the area? 15 A. Everyone. 16 Q. Hodge, Lawson are in the area, right? 17 A. Correct. 18 Q. Did you say to any of them, Hey, can that 19 guy breathe; it doesn't look like he's breathing in 20 the back of that Golf Manor car? Did you say 21 anything like that to them? 22 MR. HARDIN: Objection to the form of the 23 question. 24 A. Not to them.</p>

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<p style="text-align: right;">Page 62</p> <p>1 to why this person wasn't scated up and was not 2 scat-belted? 3 A. No, I didn't. He was not in -- he was in 4 Golf Manor's custody and control. I don't know what 5 their policies are. 6 Q. Well, but just for the safety of the 7 person -- 8 A. Uh-huh. 9 Q. -- did you raise these -- these issues? 10 A. No. 11 Q. I mean, these are -- these are safety 12 issues, right? 13 MR. HARDIN: Objection. 14 Q. Regardless of -- regardless of whose car 15 they're in, the reason the person is sitting up as 16 opposed to laying down is, at least in part, that 17 they won't suffocate or have any asphyxia, correct? 18 MR. HARDIN: Objection. 19 You may answer. 20 A. Okay. 21 Q. That's -- I mean, that's part of your 22 training, right? 23 A. Yes. 24 Q. Okay. And the same thing for a scat belt;</p>	<p style="text-align: right;">Page 64</p> <p>(Deposition Exhibit 47 was marked for identi- fication.) 1 2 3 Q. Let me hand you, sir, what is marked as 4 Exhibit 47. If you would take a look at that and 5 just tell me whether or not that is a transcript of 6 a statement you gave to police Homicide detectives 7 on November 13th, 2000. 8 A. Yes, it is. 9 Q. And that's one of the statements that you 10 looked at in preparation for this deposition, 11 correct? 12 A. Yes, it is. 13 Q. I want to direct your attention to page 3. 14 About halfway down the page there's a question that 15 says, "What did you say?" Do you see that? 16 A. Yes. 17 Q. Okay. And then your answer is, "I told 18 'em it looked fucked up, you know." 19 Question: Which, which Golf Manor guy did 20 you say this to? 21 "Answer: Heiland. Cause I know Heiland." 22 MR. HARDIN: Excuse me a minute. 23 THE WITNESS: That was never said. 24 MR. HARDIN: Just -- okay. Just go ahead</p>
<p style="text-align: right;">Page 63</p> <p>1 a person wears a scat belt for their safety, 2 correct? 3 A. Correct. 4 MR. HARDIN: Objection. 5 You may answer. 6 Q. And so what I'm asking is, when you saw 7 this person laying down, not scat-belted, in the 8 back seat of the cruiser, did you raise any concern 9 not out of who was responsible but just out of -- 10 for the safety of the person in the car? 11 MR. HARDIN: Objection. Asked and 12 answered. 13 You may answer. 14 A. That was the whole reasoning of me talking 15 to the Golf Manor officers, you know, to bring it to 16 their attention. 17 Q. When -- when you said it doesn't look -- 18 he doesn't look like he can breathe? 19 A. Well, yeah, I'm saying, period, from when 20 I looked in. 21 MR. HARDIN: Objection to the form of the 22 question. I -- I am going to object to you 23 stating something that this witness did not 24 say, in the question.</p>	<p style="text-align: right;">Page 65</p> <p>1 and keep reading. Can you start over again so 2 the -- 3 Q. "Question: What did you say? 4 "Answer: I told 'em it looked fucked up, 5 you know. 6 "Question: Which, which Golf Manor guy 7 did you say that too (sic)? 8 "Answer: Heiland. Cause I know Heiland. 9 "Question: You know Heiland. 10 "Answer: Like I said, we went to the 11 academy together. 12 "Question: You said, 'This looks fucked 13 up.'" 14 Answer: That's exactly, "exactly what I 15 said. And uh he was just shaking his head. And I 16 said, 'You know this guy?' He said, 'No.' I was 17 like oh, 'Okay.' I said uh, 'Can he breathe?' I 18 said, 'It don't like he can'" -- "'he can from the 19 way he's laying.' And then uh he was just, he just 20 shook, he just shook his head. And uh then I said 21 that" -- "And uh then I said that because he was in 22 the car." 23 Did I read that accurately? 24 A. Yeah, pretty much, that I can recall.</p>

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<p style="text-align: right;">Page 66</p> <p>1 Q. Okay. And that's -- and that's -- that is 2 consistent with your recollection? 3 MR. HARDIN: For the record, before -- 4 before this, I'm -- I'm going to indicate to 5 you that I am not aware of the actual accuracy 6 of this transcript. I have reason to doubt the 7 accuracy of transcripts from the Cincinnati 8 Police Division, so I'm going to register that 9 objection and let him answer the question, 10 though. 11 MR. MARTINS: Okay. Do you have any 12 indication that what I've read is inaccurate as 13 to what was said? 14 A. Some wording. 15 Q. No, I'm asking Counsel on the objection. 16 A. Oh. 17 MR. HARDIN: Mr. Martins, if I actually 18 knew that there was an inaccuracy, I'd tell 19 you. 20 MR. MARTINS: Okay. 21 MR. HARDIN: I just have reason to doubt 22 the accuracy. 23 MR. MARTINS: All right, sir. 24 BY MR. MARTINS:</p>	<p style="text-align: right;">Page 68</p> <p>1 A. Yes. 2 Q. And then as to the other statements that 3 this transcript says you said, "Can he breathe? I 4 said," I don't -- "It don't look like he can from 5 the way he's laying," do you have a recollection of 6 saying that to Officer Heiland? 7 A. That sounds accurate. 8 Q. All right. 9 MR. HARDIN: Are you finished with that -- 10 that examination about this statement? 11 MR. MARTINS: Yes. Yes. 12 MR. HARDIN: I'm -- I'm going to indicate 13 to you the only reason I objected is because I 14 think your question, as it was originally 15 posed, said that he said he cannot breathe, and 16 that is different than what he said in his 17 transcript. That's the reason the objection 18 was as to the form. 19 MR. MARTINS: Well, the -- the quote is, 20 "Can he breathe? It don't look like he can 21 from the way he's laying." 22 MR. HARDIN: I -- I understand that. 23 MR. MARTINS: Okay. 24 MR. HARDIN: But he didn't say: he cannot</p>
<p style="text-align: right;">Page 67</p> <p>1 Q. Now, you were saying? 2 A. In the case where it says -- 3 MR. WEISENFELDER: What page? 4 THE WITNESS: I'm sorry. I think it's 3. 5 A. Okay. Where it -- right under where it 6 says, "What did you say" right in the middle where 7 you started at -- 8 Q. Yes? 9 A. -- "I told 'em it looked fucked up," no, I 10 didn't say "it." I said "this." 11 Q. "This looks fucked up?" 12 A. Yes. 13 Q. All right. 14 A. That's meaning the whole incident. I 15 didn't say "he" or -- I'm sorry, or "it." I -- I 16 was talking about the situation as a whole. 17 Q. Anything else? 18 A. No. That's it. 19 Q. So with respect to -- and later on, I 20 guess, he says -- further down there's a question 21 that says, "You said, 'This looks fucked up.'" I 22 guess that's -- that's accurate, right? 23 A. Okay. 24 Q. Is that correct?</p>	<p style="text-align: right;">Page 69</p> <p>1 breathe. 2 MR. MARTINS: All right. 3 MR. HARDIN: Okay. 4 BY MR. MARTINS: 5 Q. After talking with Officer -- with 6 Sergeant Browner, did you talk to anyone else? 7 A. No. 8 Q. I'm sorry? 9 A. No, I didn't. 10 Q. At the time you spoke with Sergeant 11 Browner, am I correct in understanding that you knew 12 that there had been a physical altercation involving 13 several Cincinnati police officers? Correct? 14 A. Correct. I knew something went on, yes. 15 Q. You knew that there had been an officer 16 needs assistance call, because that's how you went 17 to that scene, correct? 18 A. Correct. 19 Q. You saw blood on Jorg's sleeve, correct? 20 A. Correct. 21 Q. And he had told you that it came from the 22 guy that you saw in the back seat of the cruiser? 23 A. Correct. 24 Q. You had seen some blood on Caton's sleeve,</p>

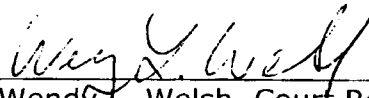
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AFFIDAVIT

- - -

STATE OF OHIO :
COUNTY OF HAMILTON : SS

I, Wendy L. Welsh, Notary Public in and for the State of Ohio, do hereby state that the transcript of the deposition of BRIAN ANTHONY BRAZILE, deponent herein, having been submitted to said deponent for review and signature, has not been signed within the thirty (30) day period allowed under the Federal Rules; said deposition to now have the same force and effect as though signed.


Wendy L. Welsh, Court Reporter

Sworn to before me this 15 day of January, 2004.



Thomas M. Blasing
Notary Public - State of Ohio

My commission expires:
May 4, 2004.